

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
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**Implementation of the Commercial
Spectrum Enhancement Act and
Modernization of the Commission's
Competitive Bidding Rules and
Procedures**)
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WT Docket No. 05-211

**JOINT COMMENTS OF
COLUMBIA CAPITAL LLC
MC VENTURE PARTNERS
AND TA ASSOCIATES, INC.**

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JOINT COMMENTS

Columbia Capital LLC (“Columbia”), MC Venture Partners (“MC”), and TA Associates, Inc. (“TA”), (collectively, the “Joint Commenters”), by their attorneys, hereby submit their comments in response to the *Further Notice of Proposed Rulemaking*, FCC 06-8, released February 3, 2006 (the “*FNPRM*”)¹ in the above-captioned proceeding. The following is respectfully shown:

I. Introduction

Columbia, MC, and TA are venture capital firms:

Columbia and MC specialize in investing in various segments of the communications and telecommunications industries and each firm has invested more than \$1 billion in portfolio companies, many of which were early stage investments in emerging broadband wireless companies. In most instances, Columbia, MC and TA act as lead or co-lead

¹ Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211.

institutional investors in their wireless portfolio companies, and play a significant role in the company's growth and success through active participation as members of the Board of Directors or Board of Managers of the companies.

TA is one of the oldest private equity and buyout firms in the world and has a \$6 billion capital base. The communications sector makes up a significant portion of the TA portfolio, and companies in the wireless business represent a growing portion of the TA investments.

Noteworthy among the wireless portfolio companies in which Columbia, MC, and/or TA have been invested in the past are Nextel Communications², Crowley Cellular,³ Bachtel Cellular Liquidity, L.P.,⁴ Sterling Cellular,⁵ Triad Cellular Corporation,⁶ TeleCorp Holding Corporation,⁷ and SBA Communications.⁸ Current portfolio companies of Columbia, MC, and/or TA Associates include MetroPCS Communications,⁹ Cleveland Unlimited d/b/a Revol,¹⁰

² Columbia provided the initial equity capital that launched FleetCall in 1987, which went on to become Nextel.

³ MC was the principal financial backer of regional cellular operator Crowley, which ultimately owned and operated stations in eleven markets.

⁴ Bachtel was formed to acquire and operate cellular telephone properties in Southeastern and Midwestern markets. TA was a major financial sponsor.

⁵ Columbia founded Sterling Cellular, which was an early consolidator of cellular properties in the mid 1990s.

⁶ Triad Cellular Corporation, a successful regional cellular operator, was formed by wireless entrepreneur Barry Lewis with backing from MC.

⁷ MC was an initial investor in PCS operator TeleCorp, which went on to become publicly traded prior to its acquisition by AT&T Wireless.

⁸ SBA Communications is a leading developer and operator of wireless communications infrastructure in the U.S., and is publicly traded on NASDAQ. The company leases antenna sites on towers to leading wireless carriers and also offers site development consulting and construction. TA first invested in SBA Communications in 1997.

⁹ MetroPCS is a rapidly growing broadband service provider serving in excess of 2 million subscribers in Atlanta, Miami, Sacramento, San Francisco and Tampa markets. Columbia, MC and TA all are significant investors in MetroPCS.

¹⁰ Revol is a PCS service provider serving Cleveland, Columbus, Akron and Youngstown, Ohio and Indianapolis, Indiana and the surrounding area. Revol is in the process of expanding service throughout the region. Columbia and MC both are major investors in the company.

Council Tree Alaska Native Wireless, LLC, Coral Wireless d/b/a Mobi PCS,¹¹ and TX-11 d/b/a/ Cellular One.¹²

Based on their longstanding investments in and commitment to the broadband wireless industry, Columbia, MC, and TA are among the most important sources of capital for wireless entrepreneurs. Several of the companies they backed have participated in and garnered spectrum in wireless spectrum auctions. As a consequence, the Joint Commenters have a significant interest in this proceeding and a substantial base of experience for informed comment.

II. The Proposed Changes To The Designated Entity Rules Should Be Adopted

The Joint Commenters support the Commission's proposal to modify its general competitive bidding rules governing benefits reserved for designated entities. There is a basic economic reality that applies to these auctions: if every participating bidder is entitled to a bidding discount then the discount has no meaning. This simple irrefutable fact explains why the Commission gives no bidding discounts with regard to "closed" licenses in spectrum auctions. Such a discount would have no economic value when everyone was eligible to receive one.

A review of the results of the latest broadband auctions indicates that the designated entity program is moving dangerously close to a situation in which every significant participant is bidding with a bidding discount. Attachment 1 hereto is a summary sheet prepared by the FCC following Auction No. 35. The sheet indicates that thirteen of the top fifteen bidders by high net bids in Auction No. 35 qualified as entrepreneurs. Of these, eight were qualified as very

¹¹ Mobi PCS provides service throughout the Honolulu BTA and is expanding service throughout other portions of the Hawaii islands. Columbia and MC both are major investors in the company.

¹² TX-11 Acquisition, Inc. acquired a license divested by Cingular Wireless in connection with the AT&T Wireless merger with capital from Columbia and MC and provides service throughout RSA TX-11. Columbia and MC both are major investors in the company.

small businesses and one was a small business. The summary shows as well that thirteen of the top fifteen bidders by the total number of high bids also qualified as entrepreneurs, ten of which were very small businesses.¹³

This trend worsened in Auction No. 58. Attachment B hereto is an FCC generated list of the top ten bidders by High Net Bids in Auction No. 58, nine of which were bidding as designated entities and eight of which were very small businesses. And, as Council Tree Communications has pointed out quite effectively to the Commission, in many cases the largest national incumbent wireless carriers in the country are the major stakeholders in these “very small business” enterprises. The inevitable result of a situation in which all the most active bidders at auction are entitled to bidding discounts is that venture capital firms will be less likely to invest in small or very small businesses as auction participants. At that point, the Congressional objective of creating spectrum-based opportunities for small and very small businesses will be lost.

Many of the investments that the Joint Commenters previously made in the wireless industry have been cashed out as a result of the acquisition of the portfolio companies, usually by larger companies. The Joint Commenters are ready, willing and able to make new investments in entrepreneurial wireless companies. However, in a marketplace that is increasingly dominated by a handful of large incumbent national carriers, the availability of a meaningful bidding discount to a small or very small business auction participation can be the determinative factor in whether an investment is made. Consequently, the Joint Commenters urge the Commission to

¹³ While there is considerable overlap between the two lists of the top fifteen bidders, the lists are not identical.

take steps to assure that meaningful bidding discounts are available to applicants which need and deserve them.

The Commission's *FNRPM* proposes to prevent a handful of large national wireless incumbents from enjoying bidding discounts when they team with small or very small business participants in region. This makes perfect sense. Large national carriers were not intended to be the beneficiaries of the designated entity program. And, now that the telecommunications financial markets have become more stable, small and very small business designated entities can gain access to capital without aligning themselves with one of the national incumbents. Given these facts, it will serve the public interest for the Commission to revise the designated program as proposed.

III. Other Large Telecommunications Companies Also Should Not Benefit From Discounts

The Joint Commenters also agree with the separate comments of Chairman Martin which recommend extending the restriction to other large telecommunications carriers with greater than \$5 billion in revenues. If a small or very small business entrepreneur is able to forge a strategic relationship with one of these large communications companies, then it will have access to capital and will not need a bidding discount to succeed at an auction. If, on the other hand, the only reason that a telecommunications giant is willing to enter into a business arrangement with a small entrepreneur is because of the availability of a bidding discount, then it is apparent that the large company is participating only for the purpose of gaining access to the discount. Obviously, it was not the original intent of Congress to benefit huge communications companies by adopting the statutory provisions promoting designated entities.

IV. Timing

The Joint Commenters strongly encourage the Commission to finalize the designated entity rules sufficiently long before applications are accepted in Auction No. 66 to permit rational business planning. The organization of a well-structured designated entity takes time and effort. It will be difficult for investors such as the Joint Commenters to make informed business decisions regarding the prospective bidders they will back if the applicable rules are unsettled. Financial markets and financial investors hate uncertainty, and the requisite certainty would be lacking if financial institutions were forced to make their investment decisions too early in the process. Based upon these considerations and concerns, the Joint Commenters request that the Commission allow a reasonable planning interval (sixty to ninety days) after the adoption of an order addressing the open designated entity issues before requiring prospective applicants to file their short form applications.

V. Conclusion

In light of the foregoing, Columbia, MC, and TA respectfully requests that the Bureau adopt auction procedures in conformance with these Comments.

Respectfully submitted,

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MC Venture Partners

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